

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HECTOR HUERTAS,

Plaintiff,

v.

RAYMOND J. SOBINA, et al.,

Defendants.

Civil Action No. 09-139 Erie

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on June 11, 2009, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 37], filed on July 14, 2010, recommended that the Defendants' motion to dismiss [Doc. No. 17] be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the motion be granted as to Defendants Sobina and Varner, and with respect to the Plaintiff's Fourteenth Amendment procedural due process claim. It was recommended that the motion be denied as to Defendant Henry, and with respect to his exhaustion and Eleventh Amendment immunity arguments. It was further recommended that the Plaintiff's motion for partial summary judgment [Doc. No. 23] be denied. The parties were allowed fourteen (14) days in which to file objections, and Plaintiff filed objections on August 2, 2010 [Doc. No. 39]. After de novo review of the motion and documents in the case, together with the Report and Recommendations and objections thereto, the following order is entered:

AND NOW, this 20<sup>th</sup> day of August, 2010;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss [Doc. No. 17] is GRANTED in part and DENIED in part; the motion is GRANTED as to Defendants Sobina and Varner and with respect to the Plaintiff's Fourteenth Amendment procedural due process claim; it is DENIED as to Defendant Henry and with respect to his

exhaustion and Eleventh Amendment immunity arguments. The Clerk of Courts is directed to terminate Defendants Sobina and Varner from this action.

IT IS FURTHER ORDERED that the Plaintiff's motion for partial summary judgment [Doc. No. 23] is DENIED.

The Report and Recommendation [Doc. No. 37] of Magistrate Judge Baxter, filed on July 14, 2010, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge